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Supreme Court of the United States

October Term 1959

No. 133

NEIL H. AMOT, Guardian of Hubert S. Amot, a mentally incompetent person, NEIL H. AMOT, Administrator with the Will Annexed of the Estate of Hubert S. Amot, Deceased, and H. S. AMOT COMPANY, a Missouri corporation,

Petitioners,

vs.

KANSAS CITY LIFE INSURANCE COMPANY, a Missouri corporation,

Respondent.

BRIEF OF RESPONDENT KANSAS CITY LIFE INSURANCE COMPANY

OSCAR S. HYDE

[illegible]

[illegible]

[illegible]

Supreme Court of the United States

October Term 1939

No. 229

NEIL H. AMIOT, Guardian of Hubert S. Amiot, a mentally incompetent person, NEIL H. AMIOT, Administrator with the Will Annexed of the Estate of Hubert S. Amiot, Deceased, and H. S. AMIOT COMPANY, a Michigan corporation,

Petitioners,

vs.

KANSAS CITY LIFE INSURANCE COMPANY, a Missouri corporation,

Respondent.

BRIEF OF RESPONDENT KANSAS CITY LIFE INSURANCE COMPANY

We have carefully read the petition for a writ of certiorari and brief in support thereof filed herein.

To urge this Court to grant the writ of certiorari and take jurisdiction of this matter, petitioners claim, pursuant to Rule 38, that the Circuit Court of Appeals has decided an important question of local law in a way probably in conflict with applicable local decisions. We assert that this case has been correctly decided.

We desire to call the Court's attention to the fact that no cases are cited in the petition and brief that were not contained in petitioners' (appellants') brief filed in the Circuit Court of Appeals.

Petitioners' summary statement of the matters involved omits the following essential facts:

Amiot took out a five year convertible term policy for $15,000, dated November 3, 1930. The policy was originally payable to his wife. On June 15, 1932, the beneficiary was changed to the H. S. Amiot Company.

The endorsement of the change on the policy was looked after by Mr. Hungerford, secretary and treasurer of the company, and the policy was in the possession of either Mr. Hungerford or Mr. Van Alstyne, president of the Wyandotte Savings Bank, from and after 1932. Mr. Hungerford paid all the premiums on the policy from and after the change in beneficiary—from May, 1932 (R. 67) to August, 1935 (R. 70).

Mr. Amiot's illness and incapacity had nothing to do with the failure to exchange the policy before it expired. If anyone was to blame, it was Mr. Hungerford.

Mr. Pinson, the insurance company's general agent, particularly called Mr. Amiot's attention to the convertible feature of the policy when he delivered it to him on November 11, 1930 (Ex. 18; R. 89). After the beneficiary was changed, Mr. Pinson in a talk with Neil Amiot (son) told him "never to let the premium lapse because if he did there probably would not be a reinstatement of the contract." Being referred to Mr. Hungerford, Mr. Pinson went to Mr. Hungerford's office in the Wyandotte Savings Bank Building, and called his attention to the fact that the policy was a five year contract, and not to let it expire because of its nature and Mr. Amiot's condition. Mr. Pinson testified that Mr. Hungerford told him, "they would look after the matter of converting the contract" (R. 90). He further testified that later, after Mr. Amiot went to the hospital, he had practically the same conversation with Mr. Hungerford (R. 91). Mr. Hungerford (R. 93) admitted having had both talks with Mr. Pinson, but testified that the conversation related only to the payment of premiums,

with no allusion made to the convertible feature of the policy. These facts destroy the force of the theoretical argument advanced by appellants.

Petitioners likewise make the same argument to this Court as they made to the Circuit Court of Appeals, plus their comment upon and criticism of the opinion of the Circuit Court of Appeals.

In the Circuit Court of Appeals, petitioners (as appellants) argued that under the facts of this case and under the law of Michigan found in cases decided by the Supreme Court of Michigan, there had been a forfeiture from which equity should grant relief because the conditions, the breach of which petitioners claim caused the forfeiture, were modal or procedural in character. Petitioners argued that the conditions stated in the convertible option are procedural, and to escape the effect of insured's failure to convert the policy within the time plainly stated in the contract, petitioners claimed the existence and benefit of an additional 31-day grace period.

Petitioners' argument is that because there was a 31-day grace period for the payment of premiums (Ex. A; R. 12), there was such a grace period for converting the policy after November 3, 1935. The policy does not say that there is any such period, and, therefore, to argue for it is to add a new provision to the contract. The court is not going to make a new contract for the parties.

The fact that the policy was a term policy for five years was emphasized by large type in the contract. The fact that the option for conversion had to be exercised after one year from date of the contract and within five years therefrom was also set forth in large type. There was no ambiguity in the contract; the rights of the parties were fixed thereby.

There was no exchange or surrender of the five year term policy for a new policy after one year and within five years from November 3, 1930, and, accordingly, it is immaterial whether there was a grace period for the payment of the first premium on any new policy which the insured might have elected to take. We deny that there was any such grace period, but whether there was or not is another moot question.

This court has not passed on this point but it is well settled that there cannot be any grace period unless a premium is due, and since no premium is due upon the termination of the period of a term contract, an insured cannot have 31 days after the expiration of the term in which to exercise an option to convert to another form of contract, upon theory that premium is due.

In the case at bar there was no forfeiture of the policy. The defendant did not terminate it. The premiums under it were paid quarterly to and including August 3, 1935. It was a five year term policy, ran its full term, and expired on November 3, 1935.

We see no object, therefore, in arguing under what circumstances Equity will grant relief from forfeitures. No forfeiture is here involved.

For these reasons, we urge that this case was correctly decided both in the District Court and the Circuit Court of Appeals; that petitioners make no sufficient showing on which they are entitled to further review of this matter; and, accordingly, we request their petition be denied.

Respectfully submitted,

Oscar C. Hull,
Counsel for Respondent.

Oxtoby, Robison & Hull,
Of Counsel for Respondent.